



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1993

Honorable Allen Place
Chair
Committee on Criminal Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-115

Re: Whether it is a violation of the Private Investigators and Private Security Agencies Act for a reserve peace officer to perform traffic control flagperson duties on a construction site without being licensed by the Texas Board of Private Investigators and Private Security Agencies (RQ-607)

Dear Representative Place:

Your request for an opinion involves the following hypothetical situation: Several reserve peace officers who are performing traffic control flagperson duties on a construction site are arrested. The reason for the arrests is that the flagpersons are not licensed by the Texas Board of Private Investigators and Private Security Agencies in alleged violation of the Private Investigators and Private Security Agencies Act (the "act"), V.T.C.S. article 4413(29bb).

You ask us whether the act prohibits a reserve peace officer, not licensed under the act, from working as a traffic control flagperson on a construction site. Section 2 of the act defines *guard company*, in pertinent part, as follows:

Sec. 2. In this Act, unless the context requires a different definition:

....

(4) "Guard company" means any person engaging in the business of or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

....

(c) control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or

(d) protection of individuals from bodily harm.

Id. § 2(4)(c), (d). Your request letter does not provide enough factual detail for us to determine whether the traffic control work performed by the peace officers in your hypothetical situation fits within the above-quoted definition; but we will assume, without deciding, that it does.

Section 3 of the act provides, in pertinent part:

Sec. 3. (a) This Act does not apply to:

....

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

(A) employed in an employee-employer relationship; or

(B) employed on an individual contractual basis;

(C) not in the employ of another peace officer; and

(D) *not a reserve peace officer*

Id. § 3(a)(3) (emphasis added). Subsection (a)(3)(D) of section 3 thus provides that a reserve peace officer is excluded from the exception that otherwise would apply to a peace officer by operation of the rest of subsection (a)(3). See *Texas Bd. of Private Investigators and Private Sec. Agencies v. Bexar County Sheriff's Reserve*, 589 S.W.2d 135, 136 (Tex. Civ. App.--San Antonio 1979, no writ). Because the hypothetical flagpersons in question are reserve peace officers, the above-quoted exception does not apply to them. You have not stated any facts that would make any other statutory exception applicable to them.

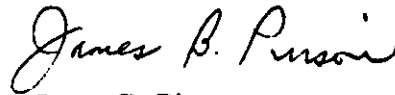
Section 13 of the act makes it "unlawful . . . for any person to . . . perform any service as a[] . . . guard company . . . unless he has obtained a license under the provisions of this Act." Sections 15 through 17 of the act establish the procedures for obtaining a license from the Texas Board of Private Investigators and Private Security Agencies.

We conclude that if a reserve peace officer performs services as a traffic control flagperson falling within the definition of *guard company* as provided in section 2(4) of the act and is not exempted by some provision of section 3, he or she must be licensed under the act.

S U M M A R Y

In the absence of an applicable statutory exception, it is a violation of section 13(a) of the Private Investigators and Private Security Agencies Act (the "act"), V.T.C.S. article 4413(29bb), for a reserve peace officer to perform any service as a "guard company" as defined in section 2(4) of the act unless the officer is licensed by the Texas Board of Private Investigators and Private Security Agencies.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee